BEFORE THE
MERIT SYSTEM PROTECTION BOARD
FOR
MONTGOMERY COUNTY, MARYLAND

IN THE MATTER OF	*	
[redacted],	*	
APPELLANT,	*	
AND	*	**CASE NO. 18-02**
MONTGOMERY COUNTY GOVERNMENT,	*	
EMPLOYER	*	

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FINAL DECISION AND ORDER

This is the final decision of the Montgomery County Merit System Protection Board (Board) on the appeal of Liquor Store Assistant Manager [redacted] (Appellant) from the decision of [redacted], Director of the Department of Liquor Control (DLC), to dismiss Appellant from employment effective August 14, 2017. *See* Amended Notice of Disciplinary Action (NODA), July 24, 2017, County Exhibit (CX) 2. The NODA charged Appellant with violations of the Montgomery County Personnel Regulations (MCPR) § 33-5(c), (e), (h), and (k), arising out of allegations that Appellant consumed alcohol on the job, allowed employees to remove alcoholic beverages from the store without paying, and approved falsified timesheets. The Appeal was filed on August 14, 2017. A hearing was held on November 15, 2017, and continued on December 7, 2017.

The disciplinary action that is the basis for this Appeal arose out of the investigation of a whistleblower's complaint concerning [redacted] (TA), a store clerk supervised by Appellant. Hearing Transcript, December 7, 2017 (Tr. (Dec. 7)) 12. The County investigation revealed several possible improprieties by TA and Appellant. The County alleged that TA received permission from Appellant to take an alcoholic beverage from the County liquor store without paying. Appellant was charged with contravening MCPR § 33-5(h) (negligent or careless in performing duties) and MCPR § 33-5(c) (violated an established policy or procedure). CX 2.

Appellant was also charged with allowing TA to leave the store before the end of her shift on December 29, 2016, and January 5, 2017, without signing out and then approving her timecard for the full shift. CX 2. Appellant was also charged with approving TA's timecard with an inaccurate arrival time on December 17, 2016. CX 2. The County charged these timekeeping and attendance offenses as being contrary to established policy or procedure and a failure to perform duties in a competent or acceptable manner, in violation of MCPR § 33-5(c) and § 33-5(e).

Another charge alleging a violation of MCPR § 33-5(c) was that on multiple weekends neither Appellant nor the store manager were there to close the store, in violation of established policy and procedure which requires that there always be a manager or assistant manager on duty.

Finally, the NODA also alleges that Appellant would drink beer while on duty at the County store. CX 2. Appellant was charged with violating MCPR § 33-5(k), being impaired or under the influence of alcohol while at work.

FINDINGS OF FACT

Appellant has been employed by DLC for over 20 years, and has been a Liquor Store Assistant Manager for 15 years at various DLC stores. Tr. (Dec. 7) 35. Appellant has been the Assistant Manager at Clarksburg for the last three years. *Id.* Appellant has not previously been subject to disciplinary action. Tr. (Dec. 7) 34. It was the testimony of [redacted] (JF), the Clarksburg Liquor Store Manager and a 40-year DLC employee, that Appellant was reliable, punctual, and a "great employee." Hearing Transcript, November 15, 2017 (Tr. (Nov. 15)) 150-51. JF further stated that he had no concerns about Appellant's performance, and that he considered Appellant to be the best liquor store employee with whom he had ever worked. Tr. (Nov. 15) 151.

Although employees may purchase alcohol at a DLC store, they are required to pay for the product before removing it from the store. Tr. (Dec. 7) 17. County witness [redacted] (JU), the Chief of Administration for DLC, testified that he was present when Appellant was interviewed by a member of the County Attorney's staff on April 3, 2017. Tr. (Dec. 7) 12. According to JU, Appellant admitted that he often bought alcoholic beverages as gifts for employees and that on December 31, 2016, he told TA to take a bottle and that he would pay for it later. Tr. (Dec. 7) 15[redacted] (JS), a DLC human resources employee, was also present and stated that Appellant admitted to allowing TA to take a bottle from the store on December 31, 2016. Tr. (Nov. 15) 62. JS also testified that when questioned, TA said Appellant said it was okay to take the bottle of champagne before it was purchased. Tr. (Nov. 15) 26.

Appellant testified that on December 31, 2016, he told employee TA that he would buy her a bottle of champagne as a holiday gift. Tr. (Dec. 7) 57. However, TA was apparently unsure what type of champagne she wanted. Rather than wait for her to decide, Appellant admitted that he told her that she could remove the champagne from the DLC store without paying. Tr. (Dec. 7) 27, 48, 57; AX 3. Appellant paid for the champagne on January 3, 2017, his next work day. Tr. (Dec. 7) 28; AX 4. Appellant acknowledged that this transgression was a lapse in judgment, and it is undisputed that paying for product before it is removed from the store is the correct procedure. Tr.

(Dec. 7) 48, 123. Appellant claimed that when giving employees a gift he pays for the alcohol before it is removed from the DLC store "99.9 percent of the time." Tr. (Dec. 7) 48.

During his testimony Appellant acknowledged that, except for County sponsored controlled tastings of samples, it is a violation of County policy for an employee to consume alcohol while on duty and on County property. Tr. (Dec. 7) 39, 41, 44. JS also testified that during the investigatory interview Appellant acknowledged that he knew employees were not supposed to drink alcohol at the store. Tr. (Nov. 15) 38.

The County presented a January 6, 2017, video which appears to show Appellant drinking beer out of a red solo cup between 8:16 and 8:34 p.m. in the back of the store while performing job functions such as counting money. CX 6. JU and JS testified that Appellant admitted to investigators that he would often have a beer in the evening before his shift ended at 9:00 p.m. Tr. (Dec. 7) 15-16; Tr. (Nov. 15) 43, 46, 66-67. Appellant testified that while he had consumed alcohol on the job during his over 20 years with the County, he has not done so "recently." Tr. (Dec. 7) 41. Appellant specifically denied that the liquid he was consuming on the January 6, 2017, video (CX 6) was beer, instead claiming that it was orange juice. Tr. (Dec. 7) 41. Appellant also denied consuming alcohol as part of his written response to the Statement of Charges. AX 3.

Appellant called [redacted] (DW), Acting Chief, DLC Retail Operations as a witness. DW testified that when DLC employees are suspected of drinking or being under the influence of alcohol while on the job she and other DLC staff will immediately visit the store and confront the employee. Tr. (Dec. 7) 81, 99. They will then take the employee to the Office of Medical Services for a blood alcohol content (BAC) test. Tr. (Dec. 7) 81-82. In most cases the employees have tested positive with a BAC of .08 or higher and are not allowed to return to work in that condition, but employees with lower BAC levels are also removed from duty. Tr. (Dec. 7) 82, 97. In those circumstances, DLC typically agrees to enter into a Last Chance Agreement with the employee under which the employee agrees to random testing without the need for probable cause and Employee Assistance Program counseling. Tr. (Dec. 7) 83-84. The agreement also provides that the employee is subject to immediate dismissal if he or she fails an alcohol test or otherwise violates the Last Chance Agreement. Tr. (Dec. 7) 101. DW also stated that a first offense of drinking on County property does not typically subject an employee to dismissal. Tr. (Dec. 7) 101-02.

Both parties agreed to stipulate as to the authenticity and admissibility of the other party's exhibits. Accordingly, the Board admitted into evidence County Exhibits 1-6:

1. Appellant's August 14, 2017, MSPB Appeal Form and Letter
2. August 9, 2017, Amended Notice of Disciplinary Action
3. July 24, 2017, Notice of Disciplinary Action
4. June 26, 2017, Statement of Charges
5. Timecards
6. January 6, 2017, video (CD-ROM)

Appellant Exhibits 1-6 were also admitted:

1. Appellant's August 14, 2017, MSPB Appeal Form Letter
2. DLC's June 26, 2017, Statement of Charges
3. Appellant's June 27, 2017, Written Response to Statement of Charges
4. Appellant's Sales Receipt, January 3, 2017
5. DLC's July 24, 2017, Notice of Dismissal
6. DLC's August 9, 2017, Amended Notice of Dismissal

In addition, a one page exhibit containing two screen shots from the Liquor Store video (County Exhibit 6), was admitted as Board Exhibit 1.

APPLICABLE LAW

Montgomery County Personnel Regulations (MCPR), 2001 (as amended December 11, 2007, October 21, 2008, November 3, 2009, and June 30, 2015), § 33, *Disciplinary Actions*, which provides, in pertinent part:

§ 33-2. Policy on disciplinary actions.

(a) ***Purpose of disciplinary actions***. A department director may take a disciplinary action against an employee to maintain order, productivity, or safety in the workplace.

(b) ***Prompt discipline***.

(1) A department director should start the disciplinary process promptly and issue a statement of charges within 30 calendar days of the date on which the supervisor became aware of the employee's conduct, performance, or attendance problem.

(2) A department director may wait for more than 30 calendar days to issue a statement of charges if an investigation of the employee's conduct or other circumstances justify a delay.

(c) ***Progressive discipline***.

(1) A department director must apply discipline progressively by increasing the severity of the disciplinary action proposed against the employee in response to:

(A) the severity of the employee's misconduct and its actual or possible consequences; or

(B) the employee's continuing misconduct or attendance violations over time.

(2) Progressive discipline does not require a department director to apply discipline in a particular order or to always begin with the least severe penalty. In some cases involving serious misconduct or a serious violation of policy or procedure, a department director may bypass progressive discipline and dismiss the employee or take another more severe disciplinary action.

(d) ***Consideration of other factors***. A department director should also consider the following factors when deciding if discipline is appropriate or how severe the disciplinary action should be:

(1) the relationship of the misconduct to the employee's assigned duties and responsibilities;
(2) the employee's work record;
(3) the discipline given to other employees in comparable positions in the department for similar behavior;
(4) if the employee was aware or should have been aware of the rule, procedure, or regulation that the employee is charged with violating; and
(5) any other relevant factors.

§ 33-5. Causes for disciplinary action. The following, while not all-inclusive, may be cause for a disciplinary action by a department director against an employee who: . . .

(c) violates any established policy or procedure; . . .

(e) fails to perform duties in a competent or acceptable manner; . . .

(h) is negligent or careless in performing duties; . . .

(k) is impaired or under the influence of alcohol or an unprescribed controlled substance while at work or when reporting to work;

Montgomery County Code, Chapter 33, Personnel and Human Resources, Section 33-14. Hearing authority of board, which states in applicable part,

(c) Decisions. . . The board shall have authority to order appropriate relief to accomplish the remedial objectives of this article, including but not limited to the following: . . .

(2) Order change in position status, grade, work schedule, work conditions and work benefits; . . .

(6) Grant employee participation in an employee benefit previously denied (training, educational program or assistance, preferential or limited work assignments and schedules, overtime pay or compensatory leave); . . .

(8) Order corrective measures as to any management procedure adversely affecting employee pay, status, work conditions, leave or morale; . . .

(10) Order such other and further relief as may be deemed appropriate consistent with the charter and laws of Montgomery County.

Montgomery County Personnel Regulations (MCPR), 2001, Section 32, Employee Drug and Alcohol Use and Drug and Alcohol Testing, (as amended July 12, 2005, October 21, 2008, July 12, 2011, July 24, 2012, and June 30, 2015), provides, in pertinent part:

§ 32-2. Definitions

(tt) *Under the influence or impaired*: A state or condition less than intoxication where consumption of alcohol or drugs has affected an individual's normal coordination, judgment, or discretion.

§ 32-3. Prevention of Prohibited Drug Use and Alcohol Misuse by County Employees under County Regulations.

(a) ***Drug and alcohol prohibitions that apply to job applicants and County employees.***
. . .

(2) A County employee . . . must not: . . .

(D) consume alcohol while at work or on duty;

(E) be impaired by, or under the influence of, alcohol while at work, on County property, or on duty. . .

Montgomery County Personnel Regulations (MCPR), 2001, Section 10, Employee Compensation, (as amended December 10, 2002, March 4, 2003, April 8, 2003, January 18, 2005, February 15, 2005, July 12, 2005, February 14, 2006, June 27, 2006, December 11, 2007, October 21, 2008, March 9, 2010, July 12, 2011, July 23, 2013, and June 30, 2015), provides, in part:

§ 10-5. Salary-setting policies.

(d) ***Salary on demotion***.

(3) ***Disciplinary demotion or demotion resulting from unsatisfactory performance***. If an employee is demoted for cause or for unsatisfactory performance, the department director must reduce the employee's salary by:

(A) no more than 20 percent of base salary; or

(B) more than 20 percent, if necessary to bring the employee's salary to the maximum salary of the new pay grade or pay band.

ISSUE

Was Appellant's dismissal consistent with law and regulation and otherwise appropriate?

ANALYSIS AND CONCLUSIONS

Standard of Review

In a disciplinary matter, the County bears the burden of proving its case by a preponderance of the evidence. Montgomery County Code, Administrative Procedures Act (APA), § 2A-10. The Board has explained that preponderance of the evidence exists when evidence presented has more convincing force than the opposing evidence, and thus results in a belief that such evidence is more likely true than not. MSPB Case No. 17-13 (2017); MSPB Case No. 13-03 (2013). *See, Metropolitan Stevedore Co. v. Rambo*, 521 U.S. 121, 137 n. 9 (1997); *Commodities Reserve Corp. v. Belt's Wharf Warehouses, Inc.*, 310 Md. 365, 370 (1987); *Muti v. University of Maryland Medical System*, 197 Md. App. 561, 583 n.13 (2011), *vacated on other grounds* 426 Md. 358 (2012) ("the preponderance of evidence standard generally translates to a greater-than-fifty-percent probability").

The County Has Proven by a Preponderance of the Evidence That Appellant Allowed an Employee to Take an Unpurchased Bottle of Alcohol from the County Liquor Store

The first charge against Appellant was that he improperly gave TA permission to take a bottle of champagne out of the store inventory without paying. CX 2. The facts are not in dispute. Appellant acknowledged using poor judgment in allowing TA to take a bottle of champagne from the County liquor store before it had been purchased. Tr. (Dec. 7) 48.

Appellant suggests that his misstep was an isolated lapse in judgment, and that his intent was to pay for the champagne immediately upon his return to work. Appellant produced a receipt to show that he did indeed pay for the item. However, the County showed, and Appellant admits, that it is the clear and eminently reasonable policy of DLC to require payment for product before it is taken from the store by an employee obtaining the product for personal use.

The County has thus proven by a preponderance of the evidence that Appellant's lapse in judgment regarding his holiday gift to TA was in contravention of MCPR § 33-5(h) (negligent or careless in performing duties) and MCPR § 33-5(c) (violated an established policy or procedure).

The County Failed to Prove That Appellant Violated Timecard and Attendance Policies

The County introduced evidence concerning the timecards and attendance of TA. CX 5. The testimony and documentary evidence was, however, ambiguous and unclear. Key information on the exhibits is simply illegible. *See, e.g.*, Tr. (Nov. 15) 32-33. While County witnesses mentioned videos of TA leaving the store without clocking out, those videos were not available to the Board. Tr. (Nov. 15) 28-29, 60, 69, 74; Tr. (Dec. 7) 16. The evidence and testimony simply do not clearly link Appellant to the alleged misbehavior by TA.

We conclude that the County failed to prove by a preponderance of the evidence that Appellant violated timecard and attendance policies with regard to TA.

The County Failed to Prove That Appellant Violated DLC Policies on Management Scheduling

The County made no real attempt to present evidence on the charge that on multiple weekends neither Appellant nor the store manager was there to close the store, in violation of established policy and procedure. The only evidence the County provided concerning Appellant's work habits came from JF, the store manager, who testified that Appellant tended to come in to work early and was dependable.

We thus find that the County failed to prove that Appellant violated policies on management scheduling.

The County Has Proven by a Preponderance of the Evidence That Appellant was Drinking on the Job at the County Liquor Store

The County alleged that Appellant would drink beer while on duty at the County store, and the NODA charged him with violating MCPR § 33-5(k), being impaired or under the influence of alcohol while at work. MCPR § 32-2(tt) defines under the influence or impaired as a "state or condition less than intoxication where consumption of alcohol or drugs has affected an individual's normal coordination, judgment, or discretion." While the County introduced evidence suggesting that Appellant would have a beer at the end of his shift, it made no attempt to demonstrate that he was "under the influence or impaired." The video evidence provided no visual indication of impairment, CX 6; Tr. (Nov. 15) 65-66, and no County witness could adequately explain how the consumption of a single beer would necessarily result in impairment. Moreover, it does not appear that the County ever subjected Appellant to blood alcohol testing, even though DW testified that it was standard procedure for DLC employees suspected of being under the influence or impaired. Accordingly, we cannot uphold the charge that Appellant violated MCPR § 33-5(k).

The NODA did not also cite to MCPR § 33-5(c) ("violates any established policy or procedure") and MCPR § 32-3(a)(2)(D) (County employees must not "consume alcohol while at work or on duty") under this charge. Nevertheless, the NODA and the Statement of Charges provide detail concerning the factual and legal basis for the charges, and explicitly address the impropriety of drinking on the job and on County property. The proper standard to assess the adequacy of charges is whether the County has given adequate notice so as to enable the employee

to make an informed response. *See* MSPB Case No. 17-15 (2017); MSPB Case No. 17-12 (2017); MSPB Case No. 08-09 (2008); MSPB Case No. 07-10 (2007); and MSPB Case No. 07-13 (2007). Although the omission makes the NODA less precise, there was sufficient specificity and clarity concerning the nature of the charges to enable Appellant to mount an adequate defense to the charge of consuming alcohol while at work and on duty. We thus conclude that the NODA gave detail sufficient to provide Appellant with adequate notice under MCPR §33-6. *See Regan v. Board of Chiropractic Examiners*, 120 Md. App. 494, 519-20 (1998), *aff'd* 355 Md. 397 (1999).[1]

It is undisputed that County policy prohibits employees from consuming alcohol while on duty and on County property. Tr. 68; AX 3, p. 2; MCPR § 32-3(a)(2)(D) (County employees must not "consume alcohol while at work or on duty"). The County produced two credible witnesses, JS and JU, who testified that Appellant admitted during an April 3, 2017, interview that at the end of his work day he would drink a beer in the store. While Appellant did not admit to this at the hearing or in his written response to the Statement of Charges (AX 3), we found the two witnesses who testified that Appellant admitted having a beer at closing time to be credible.

While it is true that the testimony of JS and JU concerning the county's investigation into the allegations against Appellant, including the statements of TA, may contain hearsay, reliable hearsay is admissible in an administrative proceeding. APA § 2A-8(e). MSPB Case No. 17-13 (2017). *See Woodward v. Office of Personnel Management*, 74 M.S.P.R. 389, 394 (1997) (investigative reports composed largely of hearsay evidence properly admitted into evidence). Moreover, in an administrative hearing a party's case may rely entirely on hearsay. *Eger v. Stone*, 253 Md. 533, 542 (1969) ("not only is hearsay evidence admissible in administrative hearings in contested cases but . . . such evidence, if credible and of sufficient probative force, may indeed be the sole basis for the decision of the administrative body."). In any case, Appellant's admissions are admissible as exceptions to the hearsay rule. Md. Rule 5-803(a).

As the Board has discussed in previous decisions, credibility is the quality that makes a witness or evidence worthy of belief. MSPB Case No. 13-03 (2013), *citing Haebe v. Department of Justice*, 288 F.3d 1288, 1300 n. 27 (Fed. Cir. 2002). One way a trier of fact may assess credibility is by observing the demeanor of the witnesses.

Appellant's denial that he drank on the job, was the least persuasive aspect of his testimony. Appellant's testimony was contradictory to his previously made statements to investigators. His testimony was also inconsistent. Appellant said that he had consumed alcohol on the job in the past, but not "recently," yet also testified that while having a beer at the end of a shift was "technically" a violation of County policy "it's really the culture of the store." Tr. (Dec. 7) 41, 44.

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[1] Because of the County's failure to reference MCPR § 33-5(c) ("violates any established policy or procedure") and MCPR § 32-3(a)(2)(D) (may not "consume alcohol while at work or on duty"), it is arguable that this charge could be limited to what was specifically pled, *i.e.*, being impaired or under the influence of alcohol while at work. However, the NODA states that the charge relates to "drinking on the premises and before your shift was up," CX 2, and Appellant clearly understood this charge to encompass drinking on the job while on duty when responding to the SOC. AX 3, p. 2; Tr. (Nov. 15) 68. While the Board finds that the charge of drinking at the store and on duty has been adequately pled in this case, we again caution the County that failure to specifically label each of its charges in a NODA and SOC, provide a narrative in support of each charge, and include all relevant citations to MCPR or other law or policy, risks dismissal of the charges in another case.

The January 6, 2017, video shows behavior which appears more consistent with Appellant's earlier admission to investigators than his subsequent denials. Appellant admitted keeping a substantial personal supply of Schlitz beer at the store, and the video shows Appellant filling the red solo cup in a location not completely visible from the video camera. CX 6; Tr. (Dec. 7) 28, 53-54. The video does not show Appellant filling the red solo cup from an orange juice container. Moreover, the liquid in Appellant's red solo cup on store video does appear more likely to be beer than, as Appellant claimed, orange juice. CX 6; Board Exhibit 1. So too, his actions recorded on the video tapes are more consistent with one savoring a beer than, as Appellant testified, one taking medication. CX 6; Tr. (Dec. 7) 41, 55, 59. We conclude that the visual evidence provided by the video provides more support for the charge of drinking a beer on the job than not.

We find that the testimony of the County witnesses was plausible, consistent, and supported by the visual evidence supplied by the store video. On the other hand, Appellant's denials on this point were self-serving, implausible, and ultimately not credible. *See* MSPB Case Nos. 15-12 & 15-13 (2016); MSPB Case No. 14-19 (2014); MSPB Case No. 10-15 (2010). Accordingly, based on Appellant's demeanor, and the self-serving implausible, and inconsistent nature of his testimony, the Board concludes that Appellant was not a credible witness with regard to whether he was drinking beer at the end of his workday on January 6, 2017.

Accordingly, we uphold the charge that Appellant violated County policy by consuming alcohol while on duty in the DLC store.

Degree of Discipline

The County argues that Appellant's behavior was inexcusable for an experienced manager and supervisor holding a position of trust and responsibility. They further assert that despite Appellant's clean record, under the County's Personnel Regulations progressive discipline may be bypassed in situations involving egregious misconduct or a serious violation of policy. MCPR § 33-2(c)(2).

As discussed above, Appellant acknowledged using poor judgment in allowing TA to take a bottle of champagne from the County liquor store even though it had not been purchased. He also testified that he bought gifts of alcoholic beverages from the DLC store for female employees, but never for male employees. Tr. (Dec. 7) 58.

Despite Appellant's misconduct, there are mitigating factors that must be considered in determining the appropriate level of discipline. The Board notes that in over 20 years of County service Appellant has no record of any prior formal complaint or discipline, and his supervisor considered him to be an exemplary employee. While it is true that MCPR § 33-2(c)(2) does not require that the County apply discipline in a particular order or begin with the least severe penalty when an employee has engaged in serious misconduct or a serious violation of policy or procedure, under the circumstances of this case, where there is evidence that other employees engaging in

similar behavior have been permitted to enter into Last Chance Agreements, more consideration for the principles of progressive discipline is warranted.

On the other hand, when there are proven allegations of misconduct "[t]he County is allowed to hold a supervisor to a higher standard as a supervisor holds a position of trust and responsibility and should be a role model for his subordinates." MSPB Case No. 05-07 (2005) (demotion from management appropriate discipline for serious misconduct by a supervisor). *See Fischer Department of Treasury*, 69 M.S.P.R. 614, 619 (1996) (removal mitigated to a demotion to a non-supervisory position); *Lampack v. U.S. Postal Service*, 27 M.S.P.R. 468, 470 (1985) (removal mitigated to a demotion to a non-supervisory position); *Dobroski v. U.S. Marshals Service*, 12 M.S.P.R. 499, 502 (1982) (dismissal of supervisor mitigated to a demotion to a nonsupervisory position following an incident of shoplifting a bottle of liquor when appellant had a long and unblemished record).

The County has every right to expect a liquor store manager to maintain strict adherence to DLC and County policies regarding inventory control and drinking on the job. Appellant's cavalier attitude about these rules, and the message that sends to subordinates, is unacceptable for one charged with responsibility to manage and supervise a DLC liquor store.

Where, as here, the Board has not sustained all of the County's charges, the Board may mitigate the discipline to the maximum reasonable penalty. MSPB Case No. 13-02 (2013). *See LaChance v. Devall*, 178 F.3d 1246, 1260 (Fed. Cir. 1999). Accordingly, weighing the nature of Appellant's misconduct together with the foregoing mitigating factors, the Board has determined that consistent with the concept of progressive discipline, the maximum appropriate penalty for Appellant's misconduct is a demotion to a non-managerial position with the minimum possible grade and salary reduction.

ORDER

Based upon the foregoing analysis the Board hereby **ORDERS**

1. That the dismissal of Appellant from County employment be rescinded;

2. That Appellant be reinstated to County service and demoted to Liquor Store Clerk II, effective August 14, 2017, with back pay;

3. That Appellant's rate of pay be at the maximum of the applicable pay grade for a Liquor Store Clerk II, in accordance with MCPR § 10-5(d)(3); and

4. That within thirty (45) days of this Order the County shall complete the actions ordered by the Board and provide written certification of full compliance to the Board.

The penalty imposed on Appellant having been significantly mitigated, the County must pay reasonable attorney fees and costs. Appellant shall submit a detailed request for attorney fees to the Board, with a copy to the Office of the County Attorney, within ten (10) working days from

the date of this Final Decision. The County Attorney will have ten (10) working days from receipt to respond. Fees will be determined in accordance with Montgomery County Code, § 33-14(c)(9).

Pursuant to Montgomery County Code, § 33-15, *Judicial review and enforcement*, and MCPR, § 35-18, *Appeals to court of MSPB decisions*, if any party disagrees with the decision of the Merit System Protection Board they may within 30 days file an appeal with the Circuit Court for Montgomery County, Maryland, in the manner prescribed under Chapter 200, Title 7 of the Maryland Rules.

For the Board
December 26, 2017

[redacted]

Charlotte Crutchfield
Chair